

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

2004 JAN 29 PM 3 30

LEO W. RICH, DANIEL J. PAROT, )  
THOMAS A. TATRO, JAMES GODDETTE, )  
GREG MAGNANT, THOMAS COTA, JAMIE )  
LEDUC, DANIEL L. MEUNIER, DWAYNE )  
NORWAY, FRANCIS LEDUC, LESLIE )  
BENOIT, TIM HEATH, )  
And Others Similarly Situated, )  
Plaintiffs, )

v. )

CITY OF SOUTH BURLINGTON, )  
VERMONT, )  
Defendant. )

BY   
DEPUTY CLERK

Case Number 2:04-cv-24

### COMPLAINT

NOW COME Plaintiffs, by and through their attorneys, Mickenberg, Dunn, Kochman, Lachs & Smith, PLC, and as for a complaint against Defendant respectfully allege as follows:

1. Plaintiffs bring this action to recover unpaid overtime compensation and other relief under the provisions of the Fair Labor Standards Act of 1938, as amended [29 U.S.C. 201-219, hereinafter the "Act" or the "FLSA"], and for a declaratory judgment under 29 U.S.C. 2201 and 2202.

2. Jurisdiction of the action is conferred upon this Court by § 16(b) of the Act [29 U.S.C. 216(b)] and by 28 U.S.C. § 1337.

3. Venue of this action is established in this Court by § 16(b) of the Act [29 U.S.C. § 216(b)]. Venue is also established pursuant to 28 U.S.C. § 1391(b).

4. Plaintiffs are each employees of Defendant City of South Burlington, Vermont.

5. The Defendant in this action is the City of South Burlington, Vermont, which is a municipal corporation duly organized and existing under the laws of the State of Vermont, with a principal place of business within the City of South Burlington.

6. Pursuant to § 16(b) of the Act [29 U.S.C. § 216(b)], the named Plaintiffs herein will each execute and file with the Court their respective consents in writing to become a party Plaintiff in this action. Should other individuals similarly situated seek to join this action, their consents will also be filed with the Court.

7. The Plaintiffs are each employees who were at all relevant times employed in an enterprise engaged in commerce or in the production of goods for commerce, as defined by § 3(s) of the Act [29 U.S.C. § 203(s)]. More specifically, Plaintiffs are employed as public works employees by Defendant City of South Burlington.

8. At all times material herein, Plaintiffs have been entitled to the rights, protections and benefits provided under the FLSA.

9. The Defendant City of South Burlington, Vermont, is an employer as defined by § 3(d) of the Act [29 U.S.C. § 203(d)] and a “public agency” as defined in § 3(x) of the Act [29 U.S.C. § 203(x)]. Upon information and belief, the Defendant at all relevant times has been aware of the provisions of the FLSA, as amended, 29 U.S.C. § 201, et. seq.

10. The Defendant is an enterprise, as defined by § 3(x) of the Act [29 U.S.C. § 203(x)].

11. Employees covered under the Act are entitled to overtime compensation at the rate of one and one-half times their regular rates of pay for all hours worked in excess of 40 hours per week, except as otherwise provided in § 7 of the Act [29 U.S.C. § 207].

12. The failure of Defendant to compensate each Plaintiff at one and one-half times his regular rate for such hours worked over 40 per week violates § 7 of the Act [29 U.S.C. § 207]. Such violations are redressable by each Plaintiff as an affected employee under § 16(b) of the Act [29 U.S.C. § 216(b)].

13. Defendant is liable to each Plaintiff in the amount of his unpaid or underpaid compensation and an additional equal amount as liquidated damages, and for reasonable attorney's fees and costs of this action.

14. On information and belief, the failure by Defendant to properly pay compensation owed to each Plaintiff is a knowing and willful violation of § 7 of the Act [29 U.S.C. § 207] within the meaning of the applicable statute of limitations [29 U.S.C. § 255(a)].

15. Therefore, each Plaintiff is entitled to the unpaid compensation and liquidated damages owed to him, and other relief available under the Act, beginning three years immediately preceding the commencement of the action.

16. The employment and work records for the Plaintiffs are in the exclusive possession, custody and control of Defendant, and Plaintiffs are unable to state precisely at this time the exact amounts owing to them. Defendant is under a duty imposed by 29 U.S.C. § 211(c) and the regulations of the United States Department of Labor to maintain and preserve payroll and other employment records with respect to each Plaintiff from which some of the amounts of Defendant's liability can be ascertained.

### **PRAYERS FOR RELIEF**

WHEREFORE, each Plaintiff requests from the Court the following relief:

(a) a declaratory judgment declaring that the Defendant has willfully and wrongfully violated its statutory and legal obligations, and deprived Plaintiffs of their rights, protections and entitlements under federal law, as alleged herein;

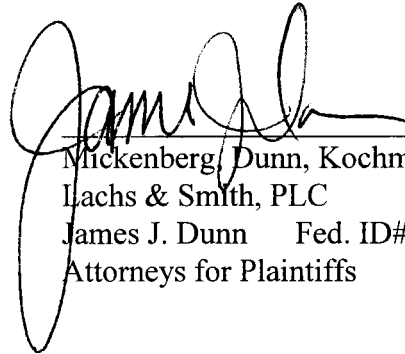
(b) an order for a complete and accurate accounting of all the compensation to which Plaintiffs are entitled;

(c) judgment against Defendant awarding each Plaintiff monetary damages in the form of back pay compensation, liquidated damages equal to the his unpaid compensation, plus post-judgment interest;

(d) reasonable attorney's fees; and

(e) the costs and disbursements of this action together with such other and further relief as the Court deems proper.

Dated at Burlington, Vermont this 29<sup>th</sup> day of January 2004.



Mickenberg, Dunn, Kochman,  
Lachs & Smith, PLC  
James J. Dunn Fed. ID# 000366577  
Attorneys for Plaintiffs

**Karen Plantier**

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**From:** "James Dunn" <jim@mickdunn.com>  
**To:** "Karen" <SBPWKP@adelphia.net>  
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Karen - I am attaching and copying below the consent form for the FLSA case. In order to be a Plaintiff in the case, an employee needs to sign one of these consents. Stay in touch on what everyone wants to do. Jim

**CONSENT TO BECOME A PARTY**

The undersigned employee of the City of South Burlington, Vermont herein gives his/her consent to become a plaintiff in an action to be brought against the City under the Federal Fair Labor Standards Act, 29 U.S.A. 201, et. seq. for the payment of unpaid overtime and other relief.

Dated at S. Burlington, Vermont this 30 day of 12-03 200<sup>3</sup>4.

Sus W Rich

**Karen Plantier**

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Dated at South Burl., Vermont this 6 day of Jan. 2004.

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Dated at \_\_\_\_\_, Vermont this 30 day of 2003 ~~2004~~.

So Burlington  
Thomas A. [Signature]

12/30/2003

**Karen Plantier**

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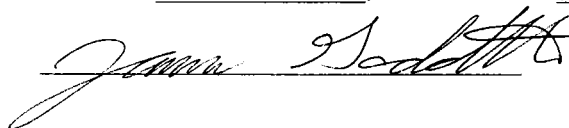
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Dated at So. Brl., Vermont this 30 day of 12/03 2004

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**Karen Plantier**

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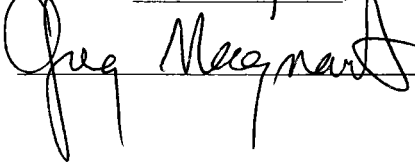
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Dated at S. Burlington, Vermont this 30th day of Dec 2003

  
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Dated at S.O.B. Vermont this 5 day of Jan 2004.

Thomas Carter

**Karen Plantier**

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Jim Dunn

**Karen Plantier**

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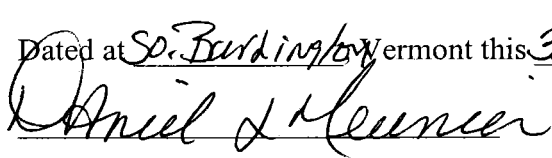
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James J. Dunn

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Gar. Pitt

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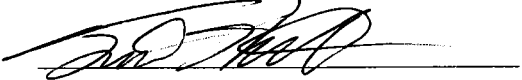
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